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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 WILLIAM CURRY JR.,
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10 Plaintiff,
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12 v.
13 ELENA M LOPEZ, JOHN SCOTT,
14
15 Defendants.

16 CASE NO. C14-5876 RJB-KLS
17 ORDER TO FILE AN AMENDED
18 COMPLAINT

19 Mr. Curry's proposed complaint is before the Court for screening prior to service. Dkt.
20 1-1. The complaint has several defects and Mr. Curry will need to file an amended complaint.
21 Mr. Curry has been a resident of the Washington State Special Commitment Center since
22 February 11, 2009, is being detained pursuant to an order from a Superior Court Judge, and is a
23 "pre trial detainee." Dkt. 1-1 proposed complaint p. 1. Mr. Curry's 28 page Complaint contains
24 arguments, rambling conclusions and accusations against the two named defendants with little to
no supporting facts. *Id.* Mr. Curry's complaint does not comport with Fed. R. Civ. P. 8(a) and is
not a clear, short and plain statement of the case. Fed. R. Civ. P. 8(a) states:

- 25 (a) Claim for Relief. A pleading that states a claim for relief must contain:
26 (1) a short and plain statement of the grounds for the court's jurisdiction, unless
27 the court already has jurisdiction and the claim needs no new jurisdictional
28 support;
29 (2) a short and plain statement of the claim showing that the pleader is entitled to
30 relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

The undersigned finds the following defects that Mr. Curry will need to cure in an amended complaint. Mr. Curry complains about his placement in a high level security area of the facility, but he provides no facts stating why he was moved to that area of the facility, who ordered his placement in the higher security area, or when he was moved. Dkt. 1-1. “The Court will find a condition of confinement unconstitutional where plaintiffs can satisfy both the objective and subjective prerequisites for a finding of liability. The objective analysis consists of determining whether the condition amounts to ‘punishment,’ because the Constitution prohibits punishment of criminal defendants [pre trial detainees] without due process. *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S.Ct. 1861, 1871–72, 60 L.Ed.2d 447 (1979). A restriction or condition constitutes punishment where it does not appear ‘reasonably related to a legitimate governmental objective.’ *Id.* at 539.” *Jones v City and County of San Francisco*, 976 F. Supp. 896, 906 (N.D. Cal 1997). Plaintiff needs to supply facts showing that his placement amounts to punishment and that his placement is not related to legitimate government goals. A court may not liberally interpret the complaint and supply missing facts. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992).

Mr. Curry also complains about his access to court and states that he does not have access to his computer while he is in the higher custody area. But, Mr. Curry does not identify any action where he has suffered an actual injury and instead simply states that defendants' actions interfered with his defense in a civil matter. Dkt. 1-1, proposed Complaint, p. 10. A person claiming a denial of access to courts must show actual injury. In *Lewis v. Casey*, 518 U.S. 343 (1996), the Supreme Court held that a plaintiff must show some actual injury resulting from a denial of access to courts in order to allege a constitutional violation. *Id.* at 349. An

1 actual injury consists of some specific instance in which plaintiff was actually denied meaningful
 2 access to the courts. *Lewis*, 518 U.S. at 350–55 (1996). Mr. Curry will need to provide greater
 3 detail to support this potential claim.

4 Mr. Curry alleges retaliation but provides no facts showing that he was engaged in
 5 protected activity and that any adverse action was taken by a named defendant because of the
 6 protected activity. To succeed on a retaliation claim a plaintiff must show: (1) a defendant took
 7 some adverse action against him; (2) because of (3) the protected conduct and that this action (4)
 8 chilled the exercise of plaintiff's First Amendment rights and (5) did not reasonably advance a
 9 legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). Again,
 10 plaintiff will need to provide greater detail.

11 Mr. Curry alleges a conspiracy pursuant to 42 U.S.C. §1985 to deny him his civil rights
 12 and he alleges that he belongs to a minority. Dkt. 1-1, proposed Complaint. p. 7. In order to
 13 properly state “a cause of action under § 1985(3), a complaint must allege (1) a conspiracy, (2) to
 14 deprive any person or a class of persons of the equal protection of the laws, or of equal privileges
 15 and immunities under the laws, (3) an act by one of the conspirators in furtherance of the
 16 conspiracy, and (4) a personal injury, property damage or a deprivation of any right or privilege
 17 of a citizen of the United States.” *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980) (citing
 18 *Griffin v. Breckenridge*, 403 U.S. 88, 102-03 (1971)); *see also Sever v. Alaska Pulp Corp.*, 978
 19 F.2d 1529, 1536 (9th Cir. 1992) “The language requiring intent to deprive of equal protection . . .
 20 means that there must be some racial, or perhaps otherwise class-based, invidiously
 21 discriminatory animus behind the conspirators’ action.” *Griffin*, 403 U.S. at 102; *see also RK*
 22 *Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002); *Butler v. Elle*, 281 F.3d
 23 1014, 1028 (9th Cir. 2002) (per curiam); *Sever*, 978 F.2d at 1536. Plaintiff has failed to plead
 24 facts to support this claim and will need to provide greater detail in an amended complaint.

1 Mr. Curry alleges a failure to protect him from harm and hints that there may have been
 2 an altercation between him and another resident, Mr. Robinson. Mr. Robinson is identified on
 3 page 11 of the proposed Complaint. Dkt. 1-1, p. 11. Later in the proposed Complaint Mr. Curry
 4 states that he was in fear that the other offender might try “to start another fight.” Dkt. 1-1,
 5 proposed Complaint p. 25. To state a claim for failure to protect Mr. Curry must satisfy two
 6 requirements:

7 First, the deprivation alleged must be, objectively, “sufficiently serious.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). For a claim based on a failure to prevent
 8 harm, the inmate must show incarceration under conditions posing a substantial
 9 risk of serious harm. *Id.* Second, “[t]o violate the Cruel and Unusual Punishment
 Clause, a prison official must have a ‘sufficiently culpable state of mind’ ...
 [T]hat state of mind is one of ‘deliberate indifference’ to inmate health or safety.”
 10 *Id.* (citations omitted). The prison official will be liable only if “the official
 11 knows of and disregards an excessive risk to inmate health and safety; the official
 12 must both be aware of facts from which the inference could be drawn that a
 13 substantial risk of serious harm exists, and he must also draw the inference.” *Id.*
 at 837.

14 Plaintiff needs to supply greater detail and facts to support his claim and show that a named
 defendant has been deliberately indifferent to his safety.

15 Mr. Curry refers to his detention at the Special Commitment Center as “unlawful
 16 detention.” Dkt. 1-1 p. 17. Mr. Curry may not challenge the propriety of his detention in these
 17 proceedings, but he may challenge his conditions of confinement. The sole federal remedy if
 18 Mr. Curry is alleging that his detention is unconstitutional is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

20 The United States Supreme Court held that “[e]ven a prisoner who has fully exhausted
 21 available state remedies has no cause of action under § 1983 unless and until the conviction or
 22 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas
 23 corpus.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The Court added:
 24

1 Under our analysis the statute of limitations poses no difficulty while the state
2 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]
§ 1983 cause of action for damages attributable to an unconstitutional conviction
or sentence does not accrue until the conviction or sentence has been invalidated.

3 *Id.* at 489. “[T]he determination whether a challenge is properly brought under § 1983 must be
4 made based upon whether ‘the nature of the challenge to the procedures [is] such as necessarily
5 to imply the invalidity of the judgment.’ *Id.* If the court concludes that the challenge would
6 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge
7 must be brought as a petition for a writ of habeas corpus, not under § 1983.” *Butterfield v. Bail*,
8 120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)). Mr.
9 Curry may not challenge his civil commitment or placement at the Special Commitment Center
10 in a civil rights action.

11 Accordingly the undersigned orders:

- 12 1. Mr. Curry is ordered to file a first amended complaint providing facts as
13 described above and eliminating the unnecessary legal arguments that are
14 in his original complaint. Plaintiff needs to title the amended complaint as
his “First Amended Complaint.”
- 15 2. This complaint will act as a complete substitute for the original and not as a
16 supplement.
- 17 3. Mr. Curry has until November 28, 2014, to file his amended complaint. If Mr.
18 Curry does not file an amended complaint the undersigned will recommend
dismissal of this action for failure to prosecute.
- 19 4. Failure to file an amended complaint that cures the defects in the original may
20 result in the undersigned filing a Report and Recommendation that this action be
dismissed for failure to comply with a court order.

21 **DATED** this 10th day of November, 2014.

22 
23 Karen L. Strombom

24 United States Magistrate Judge